

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
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Ragnar TRYGGVASON et al.)	Group Art Unit: 1797
)	
Application No.: 10/552,631)	Examiner: Benjamin M. KURTZ
)	
Filed: October 7, 2005)	Confirmation No.: 8991
)	
For: A DEVICE FOR USE IN A)	
CARTRIDGE, AND A CARTRIDGE)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Mail Stop AF

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests a pre-appeal brief review of the rejections set forth in the Final Office Action mailed on November 17, 2009. Applicant respectfully asserts that (1) the application has been at least twice rejected; (2) this request is being filed concurrently with a Notice of Appeal; (3) this request is being filed prior to an Appeal Brief; and (4) this request is no more than 5 pages in length, all in accordance with the guidelines set forth in the Official Gazette Notice of July 12, 2005. Applicant requests the prompt review of the Examiner's rejections set forth in the Final Office Action.

I. Status Of the Claims

Claims 22, 24, 25, and 36-58 are currently pending in this Application. In the Final Office Action dated November 17, 2009, the Examiner rejected claims 22, 24, 36-39, 45-49, 52, and 55-57 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,707,536 ("*Meissner*"); rejected claims 40-44 under 35 U.S.C. § 103(a) as being

unpatentable over *Meissner*; rejected claims 50 and 53 under 35 U.S.C. § 103(a) as being unpatentable over *Meissner* in view of U.S. Patent No. 3,155,612 (“*Weber*”); rejected claims 50 and 51 under 35 U.S.C. § 103(a) as being unpatentable over *Meissner* in view of U.S. Patent No. 4,787,987 (“*Hensley*”); rejected claim 54 under 35 U.S.C. § 103(a) as being unpatentable over *Meissner* in view of U.S. Patent No. 4,421,646 (“*Correge*”), U.S. Patent No. 3,730,348 (“*Weis*”); and U.S. Patent No. 3,317,044 (“*Marks*”); and rejected claims 25 and 58 under 35 U.S.C. § 103(a) as being unpatentable over *Meissner*, *Weber*, *Hensley*, *Marks*, and *Weiss*.

II. Applicant Traverses the Rejection of Claims 22, 24, 36-39, 45-49, 52, and 55-57 under 35 U.S.C. § 102(b) Based on *Meissner*

Claims 22, 24, 36-39, 45-49, 52, and 55-57 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Meissner*. Applicant respectfully traverses.

Meissner discloses a resin filter cartridge for purifying fluids. Specifically, *Meissner* discloses an “inlet passage 175,” an “outlet passage 115,” a “screen 135,” and a “fixed septum 150,” which is configured to retain resin beads 140 from exiting the outlet passage 115. (See, e.g., Fig. 5, col. 4, lines 56-63, and col. 5, lines 25-49.) Water and chemicals desired to be purified “flow directly into the filter cartridge 15 via the inlet passage 175 in the inlet end cap 170, pass through the plunger septum 130 and the resin beads 140, thence through the fixed septum 150 and through the outlet passage 115 of outlet end cap 110 . . .” (See, e.g., col. 5, lines 43-47.)

A. Independent Claim 22

Regarding pending independent claim 22, the Examiner contends that *Meissner* discloses “a cartridge (15) including: an inner space, an inlet (115) formed at a first end of the cartridge, an outlet (175) formed at a second end of the cartridge and a device

(150) comprising a hollow body . . . the first end of the hollow body being mounted to the cartridge at the inlet.” (Office Action at 2-3.) Applicant respectfully disagrees.

As can be seen in Fig. 5, the fixed septum 150 that the Examiner contends corresponds to the claimed hollow body, is located at the outlet passage 115. In contrast, pending independent claim 22 recites “an inlet formed at a first end of the cartridge . . . an outlet formed at a second end of the cartridge . . . and a device comprising a hollow body . . . having a first end and a second end . . . said first end of the hollow body being mounted to the cartridge at the inlet.” Thus, *Meissner* does not disclose each and every element as arranged in pending independent claim 22.

In response to a similar argument, the Examiner implicitly admits that *Meissner* fails to disclose the same arrangement as required under 35 U.S.C. § 102(b), but inexplicably responds by arguing that there is no difference between inlets and outlets: “The structure of an inlet or outlet is merely an opening through which fluid may flow.” (Office Action at 9.) The Examiner also attempts to rectify the failure of *Meissner* to anticipate the claim by arguing that “the apparatus could operate with fluid flowing in the opposite direction and the apparatus could continue to function.” (Id.) Arguing that the prior art device could be flipped over, or have inlet and outlet filters swapped, does not satisfy the standard of anticipation under 35 U.S.C. § 102(b).

Moreover, even if the Examiner were to issue a new, non-final Office Action based on 35 U.S.C. § 103(a), the Examiner’s logic regarding *Meissner* would remain fundamentally incorrect. The filtration device of *Meissner* and the claimed medical liquid preparation device arise from different industries and solve different problems. The claimed “first end of the hollow body” is “mounted to the cartridge at the inlet in such a

manner that the hollow body extends into the inner space . . . the first end of the hollow body being open and configured to receive said liquid to be introduced.” By contrast, the fixed septum 150 of *Meissner* is expressly positioned at the filter cartridge outlet, so its parallel slits can prevent resin beads from exiting the filter cartridge. (See, col. 4, lines 59-64.) There would be no reason or motivation for one of ordinary skill in the art to move the fixed septum 150 of *Meissner* to the inlet, and even if it were so modified, the device of *Meissner* would fail to prevent resin beads from exiting the filter cartridge.

B. Independent Claim 55

Regarding independent claim 55, the Examiner contends that *Meissner* discloses “a cartridge (15) including: an inner space, an inlet (115) located at a first end of the cartridge, an outlet (175), a device (150) comprising a hollow body . . . a first end of the hollow body being mounted to the cartridge at the inlet . . . and a filter (135) arranged at the outlet, wherein the filter is a planar filter (fig. 2, 5).” (Office Action at 5.) Applicant respectfully disagrees for at least the same reasons as discussed above with respect to claim 22. Namely, *Meissner* fails to teach or suggest each and every element as arranged in claim 55, including among other things, “a device (150) comprising a hollow body . . . a first end of the hollow body being mounted to the cartridge at the inlet...and a filter (135) arranged at the outlet, wherein the filter is a planar filter (fig. 2, 5).” Thus, *Meissner* fails to anticipate independent claim 55 as required under 35 U.S.C. § 102(b).

Accordingly, for at least the reasons discussed above, pending independent claims 22 and 55 are allowable over *Meissner*. Moreover, claims 24, 36-39, 45-49, 52, and 56-57, should be allowed at least due to their dependence from one of pending independent claims 22 or 55 and due to their recitations of additional patentable subject matter.

III. Applicant Traverses the Rejection of Claims 40-44; 50 and 53; 50 and 51; 54; and 25 and 58 under 35 U.S.C. § 103(a) Based on *Meissner* in view of Various Combinations of *Weber, Hensley, Correge, Weis, and Marks*.

Claims 40-44; 50 and 53; 50 and 51; 54; and 25 and 58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Meissner*, in view of various combinations of *Weber, Hensley, Correge, Weis, and Marks*. *Meissner* fails to disclose or suggest each and every feature of allowable independent claims 22 and 55, from which claims 25, 40-44, 50, 51, 53, 54, and 58 depend either directly or indirectly (see discussion above). *Weber, Hensley, Correge, Weis, and Marks* fail to remedy the above-mentioned deficiencies of *Meissner*. Thus, claims 25, 40-44, 50, 51, 53, 54, and 58 should be allowed at least due to their dependence from one of independent claims 22 or 55 and due to their recitations of additional patentable subject matter.

IV. Conclusion

For the foregoing reasons, in addition to the reasons provided in the Reply to the non-final Office Action, Applicant respectfully submits that the rejections of claims 22, 24, 25, and 36-58 include factual and legal deficiencies entitling Applicant to a pre-appeal brief review of the Final Office Action. Applicant requests that the rejections be withdrawn and the claims allowed. Please grant any extensions of time required to enter this response and charge any additional fees to our deposit account No. 06-0916.

Respectfully submitted,

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Dated: February 16, 2010

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